IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1177 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LALJIBHAI ARJANBHAI PATEL - Applicant(s)
Versus
HEMLATABEN BABULAL KOLADIYA & 3 - Respondent(s)

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Appearance :
MR ASHISH M DAGLI for Applicant(s) : 1,
None for Respondent(s) : 1 - 3.
PUBLIC PROSECUTOR for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/09/2007

ORAL JUDGMENT

By way of this petition under Article 227 of the Constitution of India, the petitioner, original complainant has prayed for an appropriate order quashing and setting aside the judgment and order passed by the learned Sessions Court,

Junagadh dated 13-4-07 in Criminal Revision Application No.108/05 as well as the order passed by the ld. Chief Judicial Magistrate, Junagadh dated 15-9-05 passed in inquiry case No.83/05 in dismissing the complaint u/s 203 of the Criminal Procedure Code.

2. The petitioner filed criminal case being inquiry case No.83/05 against the respondent Nos.1 to 3 herein, original accused in the Court of ld. Chief Judicial Magistrate for the offence u/s 406 r/w 420 of IPC alleging inter alia that the petitioner has entered into one agreement to sale with respect to land in question in the year 1996 and thereafter by supplementary agreement to sale in the year 1997 and the petitioner has paid an amount of Rs.1 lac towards *bana* amount. However, the respondents have not executed the sale deed even for the land which is found to be in their possession and therefore, it is alleged that the respondents have committed the offence u/s 406 r/w 420 of IPC. The ld. Magistrate sent the complaint to the Police Inspector, Junagadh "B" Division Police Station for inquiry u/s 202 of Criminal Procedure Code and after inquiry, the Investigating Officer submitted the report that there is a case made out against the accused persons for the offence u/s 406 r/w 420 of IPC. The said report, statements, evidence etc. came to be considered by the ld. Chief Judicial Magistrate, Junagadh and after considering the same, the ld. Chief Judicial Magistrate dismissed the said complaint in exercise of powers u/s 203 of Criminal Procedure Code by holding that basically the dispute is of a civil nature and for the agreement to sale, the petitioner has already filed the Special Civil Suit No.134/04 for specific relief of the agreement to sale of 1997. Being aggrieved by the

order passed by the ld. Chief Judicial Magistrate, Junagadh dated 15-9-05, the petitioner preferred revision application being Criminal Revision Application No.108/05 before the learned Sessions Court, Junagadh and the learned Sessions Court, Junagadh by its judgment and order dated 13-4-07 has dismissed the said revision application confirming the order passed by the ld. Chief Judicial Magistrate. Being aggrieved by both the aforesaid orders, the petitioner preferred this petition under Article 227 of the Constitution of India.

3. Shri Dagli, learned advocate appearing on behalf of the petitioner has vehemently submitted that both the Courts below have materially erred in dismissing the complaint by holding that the dispute in the complaint is purely of a civil nature. It is submitted that even the learned trial Court has materially erred in holding that the suit which has been filed by the petitioner for specific performance of the agreement to sale is barred by limitation. He has also further submitted that the petitioner has paid an amount of Rs.1 lac towards *bana* amount for the entire land in question and agreement to sale came to be executed by the respondents, - original land owner, though they were not in possession of the entire land in question and therefore, the intention of the accused persons was to cheat the petitioner. It is also further submitted by him that even for the land which is actually in possession of the original land owner, the petitioner was ready and willing to purchase the same and pay the sale consideration, still the accused persons did not execute the sale deed. Under the circumstances, it is requested to allow the present petition.

4. Shri Mengdey, ld. APP while opposing the present petition

has submitted that the ld. Magistrate has exercised the discretion vested in it as provided u/s 203 of Criminal Procedure Code and has dismissed the complaint by holding and observing that the dispute which has been raised in the complaint is purely of a civil nature and the said order has been confirmed by the ld. Revisional Court which is not required to be entertained by this Court in exercise of powers under Article 227 of the Constitution of India. Therefore, it is requested to dismiss the present petition.

5. Heard the learned advocates appearing on behalf of the respective parties.

6. At the outset, it is required to be noted that the alleged agreement to sale has been executed in the year 1996 and thereafter, further additional and/or supplementary agreement to sale came to be entered into in 1997. It appears that there was some dispute with regard to boundaries and some persons have encroached upon the land for which the agreement to sale is entered into and some suit came to be filed in the year 1999 and even as per the averments in the complaint, it appears that the petitioner was aware of the said proceeding of 1999. It also appears from the record that thereafter, in the year 2004, the petitioner has filed a civil suit for specific performance of the agreement to sale which is pending. Thereafter, after a period of a year, on even filing the suit, the present complaint has been filed. Looking to the averments and allegations in the complaint, it prima facie appears to the Court that the dispute which is raised in the complaint is purely of a civil nature based upon the agreement to sale for which a suit for specific performance is already initiated and/or filed by

the petitioner. Considering the above, when the ld. Magistrate has dismissed the complaint in exercise of powers u/s 203 of Criminal Procedure Code and when the same is confirmed by the revisioinal Court, it cannot be said that any of the Court has committed any error in dismissing the said complaint. Under the circumstances, no case is made out to interfere with the orders passed by both the Courts below. Under the circumstances, the present petition is required to be dismissed and is accordingly dismissed.

At this stage, Shri Dagli, learned advocate appearing on behalf of the petitioner has requested to make suitable observation that the observation made by the ld. Chief Judicial Magistrate and/or revisional Court may not come in the way of the petitioner in the suit which is filed by the petitioner. It goes without saying that any of the findings by the ld. Chief Judicial Magistrate and/or revisional Court will not and/or shall not come in the way of the petitioner in the suit which is pending, as the observation made by both the Courts below are with regard to the criminal complaint.

(M.R. Shah, J.)

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